

<b>TO: Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court Eastern District of New York on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. 08cv1727 (DRH)	DATE FILED 4/28/2008	U.S. DISTRICT COURT Eastern District of New York
PLAINTIFF  Firepass IP Holdings, Inc., et al		DEFENDANT  The Boeing Company
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 US RE40,065 E	2/19/2008	See Attached Complaint
2 US 6,418,752 B2	7/16/2002	See Attached Complaint
3 US 6,314,754 B1	11/13/2001	See Attached Complaint
4 US 7,207,392 B2	4/24/2007	See Attached Complaint
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT		
CLERK Robert C. Heinemann	(BY) DEPUTY CLERK 	DATE 4/30/2008

Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

\_\_\_\_\_  
FIREPASS IP HOLDINGS, INC. and FIREPASS  
CORPORATION,

Plaintiffs,

- against -

THE BOEING COMPANY,

**HURLEY, J.**  
Defendant.

**ORENSTEIN, M.J.**

COMPLAINT FOR PATENT  
INFRINGEMENT AND  
DEMAND FOR JURY  
TRIAL

08 **FILED** 1727  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ APR 28 2008 ★  
BROOKLYN OFFICE

Plaintiffs Firepass IP Holdings Inc. ("Firepass Holdings") and Firepass Corporation ("Firepass") (collectively referred to as "Plaintiffs"), by and through their undersigned counsel, Cohen & Gresser LLP, as and for their Complaint against Defendant The Boeing Company ("Defendant"), hereby allege, upon knowledge with respect to themselves and their own acts, and upon information and belief as to all other matters, as follows:

**NATURE OF THE CASE**

1. This is a civil action for infringement of one or more of United States Patent No. 6,334,315 ("the '315 patent") with its corresponding reissue patent No. RE 40,065 ("the RE 40,065 patent"); United States Patent No. 6,418,752 ("the '752 patent"); United States Patent No. 6,314,754 ("the '754 patent"); and United States Patent No. 7,207,392

("the '392 patent") (collectively referred to herein as "the patents-in-suit"), brought pursuant to the United States patent laws, 35 U.S.C. § 271, *et seq.*

### **PARTIES**

2. Firepass Holdings is a corporation organized and existing under the laws of the State of Delaware, with its address at P.O. Box 2021, New York, NY 10159, and is the owner and assignee of the '392 patent, the '315 patent, the '754 patent, and the '752 patent.

3. Firepass is a corporation organized and existing under the laws of the State of Delaware, with its headquarters at 19 W. 21<sup>st</sup> Street, Suite 503, New York, NY 10010, and is the owner and assignee of the RE 40,065 patent.

4. Igor K. ("Gary") Kotliar ("Kotliar") is an individual residing in the State of New York, and is the sole inventor of the patents-in-suit.

5. On information and belief, Defendant is a corporation organized and existing under the laws of the State of Delaware, with its principal executive offices at 100 N. Riverside, Chicago, IL 60606.

6. Defendant manufactures, supplies, offers to sell and/or sells aircraft products, including but not limited to Boeing 787 airplanes (the "Infringing Products"), to companies across the United States, including the companies that place the Infringing Products in the stream of Commerce in this judicial district.

### **JURISDICTION AND VENUE**

7. This Court has exclusive subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1338(a).

8. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b).

9. This Court has personal jurisdiction over Defendant because Defendant has conducted and does conduct business within the State of New York and in this judicial district. Directly and/or through intermediaries (including airline companies, distributors, parts manufacturers, and others), Defendant ships, distributes, offers for sale, sells, and advertises its products in the United States, the State of New York, and this judicial district. Defendant has purposefully and voluntarily placed one or more of its Infringing Products into the stream of commerce with the expectation that said products will be made, used, sold, offered for sale, sold and/or imported in this judicial district. The Infringing Products have been and continue to be used by consumers in this judicial district.

#### **CLAIM FOR RELIEF**

10. The '315 patent, entitled "Hypoxic fire prevention and fire suppression systems for computer cabinets and fire-hazardous industrial containers," was duly and legally issued by the United States Patent and Trademark Office on January 1, 2002, after full and fair examination. The '315 patent was also duly and legally reissued by the United States Patent and Trademark Office on February 19, 2008, under the number RE 40,065. Copies of the RE 40,065 reissue patent and the '315 patent are annexed hereto as Exhibit A.

11. The '752 patent, entitled "Hypoxic fire prevention and fire suppression systems and breathable fire extinguishing compositions for human occupied environments," was duly and legally issued by the United States Patent and Trademark Office on July 16, 2002, after full and fair examination. A copy of the '752 patent is annexed hereto as Exhibit B.

12. The '754 patent, entitled "Hypoxic fire prevention and fire suppression systems for computer rooms and other human occupied facilities," was duly and legally issued by the United States Patent and Trademark Office on November 13, 2001, after full and fair examination. A copy of the '754 patent is annexed hereto as Exhibit C.

13. The '392 patent, entitled "Method of preventing fire in computer room and other enclosed facilities," was duly and legally issued by the United States Patent and Trademark Office on April 24, 2007, after full and fair examination. A copy of the '392 patent is annexed hereto as Exhibit D.

14. Defendant manufactures, imports into, offers for sale, sells, uses, designs, and/or develops, in the United States (and/or manufactures outside the United States and directs into the United States), either directly, or through its affiliates, subsidiaries and/or distributors, airplane products, including the Infringing Products.

15. In particular, since 2004 and until April 22, 2008, according to information provided on Defendant's website, Defendant has amassed at least 893 orders for the Infringing Products, each valued at \$146 - \$200 million dollars, totaling approximately \$130.4 - \$178.6 billion dollars.

16. Defendant's Infringing Products include and/or utilize devices, systems, methods and/or compositions that are covered by one or more claims of the patents-in-suit (e.g., claims 5, 12-14 of the RE 40,065 patent; claim 1 of the '752 patent; claims 1-2 of the '754 patent; and claims 14-16 of the '392 patent).

17. Defendant has infringed and is infringing, literally or under the doctrine of equivalents, one or more claims of the patents-in-suit by practicing, without authority, one or more of the following acts: (a) making, using, offering to sell, and selling in the

United States the invention of one or more claims of the patents-in-suit; and (b) importing into the United States the invention of one or more claims of the patents-in-suit.

18. In addition, Defendant has infringed and is infringing the patents-in-suit by (a) inducing infringement of one or more claims of the patents-in-suit; and (b) contributing to infringement of one or more claims of the patents-in-suit.

19. Defendant's acts of infringement have been and continue to be willful, knowing and deliberate.

20. Specifically, Defendant has been aware of Kotliar's inventions and technology since at least July of 2001, when information about Kotliar's inventions and technology was disclosed to Defendant.

21. Moreover, information about Kotliar's inventions and technology was again disclosed to Defendant at a Federal Aviation Administration ("FAA") conference in Atlantic City in October of 2001.

22. Furthermore, International Aero Inc. in Seattle conducted a set of tests according to FAA protocols and using Kotliar's inventions and technology at a facility known as the Fire Lab in or around 2003. Defendant visited the Fire Lab on several occasions to see the testing and the results.

23. Defendant was further placed on express notice of Kotliar's inventions and technology by correspondence sent to Defendant in 2005, 2006, and 2007.

24. As a direct and proximate result of Defendant's acts of infringement, Plaintiffs have been, are being, and will be damaged. Consequently, Plaintiffs are entitled to compensation for their damages from Defendant pursuant to 35 U.S.C. § 284 in an amount that cannot presently be quantified, but will be ascertained at trial.

25. As a direct and proximate result of Defendant's acts of infringement, Plaintiffs have been irreparably harmed and will continue to be harmed unless and until Defendant's infringing acts are enjoined and restrained by order of this Court.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs demand the following relief:

- (i) A judgment declaring that the patents-in-suit were duly and legally issued, are valid, and are enforceable;
- (ii) A judgment declaring that the Defendant has infringed the patents-in-suit as alleged herein;
- (iii) A judgment declaring that the Defendant has willfully infringed the patents-in-suit as alleged herein;
- (iv) A judgment and order awarding Plaintiffs damages under 35 U.S.C. § 284, including treble damages for willful infringement as provided by 35 U.S.C. § 284, and supplemental damages for any continuing post-verdict infringement up until entry of the final judgment with an accounting as needed;
- (v) A judgment and order awarding Plaintiffs pre-judgment and post-judgment interest on the damages awarded;
- (vi) A judgment and order declaring this to be an exceptional case and awarding Plaintiffs the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285;
- (vii) A judgment and order that the Defendant, its agents, employees, representatives, successors and assigns, and those acting in privity or in concert

therewith, be permanently enjoined from further infringement of the patents-in-suit; and

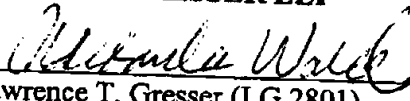
(viii) Such other and further relief as the Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial as to all triable issues.

Dated: New York, New York  
April 28, 2008

**COHEN & GRESSER LLP**

  
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